

REMARKS

Applicants respectfully request further examination and reconsideration in view of the instant amendments and response. Claims 1-18 and 26-40 are pending. Claims 1-18 and 26-40 are rejected. Claims 1, 11, 26, 33 and 37 are amended herein. No new subject matter has been added as a result of the amendments.

Support for the amendments to Claims 1, 11, 26, 33 and 37 can be found at least at page 12, line 12 - page 13, line 15; page 14, lines 14-29; and page 17, line 33 - page 18, line 2.

Double Patenting

According to the Final Office Action mailed February 18, 2009, hereinafter referred to as the “instant Office Action,” Claims 1, 6-8, 10, 11, 13, 16-19, 23-26, 30-33, 36, 37, 39 and 40 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being obvious over claims 1, 4, 8-10, 13, 14, 16, 29, 30, 31-34, 38, 39 and 41 of copending Application No. 10/698,810 in view of Agnoli. See instant Office Action at page 11. Claims 23-25 have been cancelled. Therefore, a discussion regarding Claims 23-25 is moot at this point. Applicants respectfully request that these provisional rejections be held in abeyance until all other substantive issues in this case have been resolved. The filing of a terminal disclaimer in this case will not constitute an admission of the propriety of the provisional obviousness-type double patenting rejection. See MPEP § 804.02 and *Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991).

35 U.S.C. § 103(a)

Claims 1-3, 6, 8, 10-12, 14, 16 and 18

The instant Office Action states that Claims 1-3, 6, 8, 10-12, 14, 16 and 18 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2003/0158913 by Agnoli et al., hereinafter referred to as “Agnoli,” in view of U.S. Patent No. 7,171,206 by Wu. The Applicants have reviewed Agnoli and Wu, and respectfully submit that the embodiments recited in Claims 1-3, 6, 8, 10-12, 14, 16 and 18 are patentable over the combination of Agnoli and Wu for at least the following rationale.

“As reiterated by the Supreme Court in *KSR*, the framework for the objective analysis for determining obviousness under 35 U.S.C. § 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). Obviousness is a question of law based on underlying factual inquiries” including “[a]scertaining the differences between the claimed invention and the prior art” (MPEP 2141(II)). “In determining the differences between the prior art and the claims, the question under 35 U.S.C. § 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious” (emphasis in original; MPEP 2141.02(I)). Applicants note that “[t]he prior art reference (or references when combined) need not teach or suggest all the claim limitations, however, Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art” (emphasis added; MPEP 2141(III)).

Applicants respectfully submit that Agnoli does not teach:

A method of servicing content for delivery to a client device, said method comprising:

receiving a request for an item of content at a portal;
identifying a type of service to be performed on said item
of content, wherein said type of service to be performed is
derived from said request for said item of content, and wherein
said item of content is identified during a session involving said
client device;

sending a message associated with said request from
said portal to a service location manager;

using, at said service location manager, an estimate of resources associated with performing said service to select a provider from a plurality of providers capable of performing said service;

sending a second message from said service location
manager to said portal, wherein said second message
comprises information for locating and contacting said provider;

sending a third message from said portal to said client
device comprising information for locating and contacting said
provider; and

providing information for transferring said session to said provider, wherein said provider performs said service on said item of content upon being transferred said session

as recited in independent Claim 1, and the similar embodiments of independent Claim 11. Claims 2, 3, 6, 8, 10, 12, 14, 16 and 18 that depend from Claims 1 and 11 include similar recitations.

Applicants understand Agnoli to disclose “a product for publishing transcoded media content in response to publishing service requests from end users” (paragraph [0012]). In particular, Applicants understand Agnoli to teach that the “process considers the processing load that will be created by the transcoding task and the current load being borne by each transcoding server” (paragraph [0029]). While Applicants understand Agnoli to assess current loads on processors while publishing media, Applicants respectfully submit that Agnoli does not teach, describe or suggest “sending a message associated with said request from said portal to a service location manager,” “sending a

second message from said service location manager to said portal, wherein said second message comprises information for locating and contacting said provider” and “sending a third message from said portal to said client device comprising information for locating and contacting said provider” (emphasis added) as claimed.

Applicants respectfully submit that performing tasks on various servers while balancing the processing load is not the same as, and instead different from and does not teach, suggest or render obvious “sending a message associated with said request from said portal to a service location manager,” “sending a second message from said service location manager to said portal, wherein said second message comprises information for locating and contacting said provider” and “sending a third message from said portal to said client device comprising information for locating and contacting said provider” (emphasis added) as claimed. In particular, Applicants respectfully submit that Agnoli is silent to such teachings.

Moreover, Applicants respectfully submit that Wu does not overcome the shortcomings of Agnoli. As understood by the Applicants, Wu teaches “transferring a communication session from one service area to another” (Abstract). While Applicants understand Wu to transfer a session from one processor to another, Applicants respectfully submit that Wu does not teach, describe or suggest “sending a message associated with said request from said portal to a service location manager,” “sending a second message from said service location manager to said portal, wherein said second message comprises information for locating and contacting said provider” and “sending a

third message from said portal to said client device comprising information for locating and contacting said provider" (emphasis added) as claimed.

Accordingly, Applicants respectfully assert that the combination of Agnoli in view of Wu does not teach, disclose or suggest the claimed embodiment of the present invention as recited in independent Claims 1 and 11, that these claims overcome the rejection under 35 U.S.C. § 103(a), and that these claims are thus in a condition for allowance. Applicants respectfully submit that the combination of Agnoli in view of Wu also does not teach or suggest the additional embodiments as recited in Claims 2, 3, 6, 8, 10, 12, 14, 16 and 18 that are dependent on independent Claims 1 and 11. Therefore, Applicants respectfully submit that Claims 2, 3, 6, 8, 10, 12, 14, 16 and 18 overcome the rejection under 35 U.S.C. § 103(a), and are thus in a condition for allowance as being dependent on allowable base claims.

Claims 33, 34 and 36-39

The instant Office Action states that Claims 33, 34 and 36-39 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Agnoli, in view of Wu. The Applicants have reviewed Agnoli and Wu, and respectfully submit that the embodiments recited in Claims 33, 34 and 36-39 are patentable over the combination of Agnoli and Wu for at least the following rationale.

Applicants respectfully submit that Agnoli does not teach:

A computer-readable medium having computer-readable program code embodied therein for causing a computer system to perform a method for servicing content for delivery to a client device, said method comprising:

receiving a request for an item of content at a portal;

identifying a type of service to be performed on said item of content, wherein said type of service to be performed is derived from said request for said item of content, and wherein said item of content is identified during a session involving said client device;

sending a message associated with said request from said portal to a service location manager;

using, at said service location manager, an estimate of resources associated with performing said service to select a provider from a plurality of providers capable of performing said service;

sending a second message from said service location manager to said provider, wherein said second message comprises information enabling said provider to establish communication with said client device; and

providing information for transferring said session to said provider, wherein said provider performs said service on said item of content upon being transferred said session

as recited in independent Claim 33, and the similar embodiments of independent Claim 37. Claims 34, 36, 38 and 39 that depend from Claims 33 and 37 include similar recitations.

Applicants understand Agnoli to disclose “a product for publishing transcoded media content in response to publishing service requests from end users” (paragraph [0012]). While Applicants understand Agnoli to assess current loads on processors while publishing media, Applicants respectfully submit that Agnoli does not teach, describe or suggest “sending a message associated with said request from said portal to a service location manager ... [and] sending a second message from said service location manager to said provider, wherein said second message comprises information enabling said provider to establish communication with said client device” (emphasis added) as claimed.

Applicants respectfully submit that performing tasks on various servers while balancing the processing load is not the same as, and instead different

from and does not teach, suggest or render obvious “sending a message associated with said request from said portal to a service location manager ... [and] sending a second message from said service location manager to said provider, wherein said second message comprises information enabling said provider to establish communication with said client device” (emphasis added) as claimed. In particular, Applicants respectfully submit that Agnoli is silent to such teachings.

Moreover, Applicants respectfully submit that Wu does not overcome the shortcomings of Agnoli. As understood by the Applicants, Wu teaches “transferring a communication session from one service area to another” (Abstract). Applicants respectfully submit that transferring a session from one processor to another is not the same as, and does not teach, describe or suggest “sending a message associated with said request from said portal to a service location manager ... [and] sending a second message from said service location manager to said provider, wherein said second message comprises information enabling said provider to establish communication with said client device” (emphasis added) as claimed.

Accordingly, Applicants respectfully assert that the combination of Agnoli in view of Wu does not teach, disclose or suggest the claimed embodiment of the present invention as recited in independent Claims 33 and 37, that these claims overcome the rejection under 35 U.S.C. § 103(a), and that these claims are thus in a condition for allowance. Applicants respectfully submit that the combination of Agnoli in view of Wu also does not teach or suggest the additional embodiments as recited in Claims 34, 36, 38 and 39 that are

dependent on independent Claims 33 and 37. Therefore, Applicants respectfully submit that Claims 34, 36, 38 and 39 overcome the rejection under 35 U.S.C. § 103(a), and are thus in a condition for allowance as being dependent on allowable base claims.

Claims 4, 5 and 15

The instant Office Action states that Claims 4, 5 and 15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Agnoli in view Wu, further in view of U.S. Patent No. 6,421,733 by Tso et al., hereinafter referred to as “Tso.” The Applicants have reviewed Agnoli, Wu and Tso and respectfully submit that the embodiments recited in Claims 4, 5 and 15 are patentable over the combination of Agnoli, Wu and Tso, for at least the following rationale.

Claims 4 and 5 are dependent on independent Claim 1 and include the recitations of Claim 1. Claim 15 is dependent on independent Claim 11 and includes the recitations of Claim 11. Hence, by demonstrating that Agnoli, Wu and Tso do not show or suggest the embodiments of independent Claims 1 and 11, it is also demonstrated that Agnoli, Wu and Tso do not show or suggest the embodiments of Claims 4, 5 and 15.

For the same rationale as above, Applicants respectfully submit that Agnoli in view of Wu does not teach, describe, or suggest the claimed embodiments. Further, Applicants respectfully submit that Tso does not overcome the shortcomings of Agnoli and Wu. As understood by the Applicants, Tso discloses a method for determining which transcoding service providers are invoked. In particular, Tso discloses that the “predetermined

selection criteria may comprise ... network characteristics, including ... bandwidth" (column 7, lines 20-35). Applicants respectfully submit that selecting a provider based on bandwidth is not the same as, and does not teach, describe or suggest "sending a message associated with said request from said portal to a service location manager," "sending a second message from said service location manager to said portal, wherein said second message comprises information for locating and contacting said provider" and "sending a third message from said portal to said client device comprising information for locating and contacting said provider" (emphasis added) as claimed. In particular, Applicants respectfully submit that Agnoli, Wu and Tso are silent to such teachings.

Applicants respectfully submit that the combination of Agnoli in view of Wu, further in view of Tso also does not teach or suggest the additional embodiments as recited in Claims 4, 5 and 15 that are dependent on independent Claims 1 and 11. Therefore, Applicants respectfully submit that Claims 4, 5 and 15 overcome the rejection under 35 U.S.C. § 103(a), and are thus in a condition for allowance as being dependent on allowable base claims.

Claim 35

The instant Office Action states that Claim 35 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Agnoli in view Wu, further in view of Tso. The Applicants have reviewed Agnoli, Wu and Tso and respectfully submit that the embodiments recited in Claim 35 are patentable over the combination of Agnoli, Wu and Tso, for at least the following rationale.

Claim 35 is dependent on independent Claim 33 and includes the recitations of Claim 33. Hence, by demonstrating that Agnoli, Wu and Tso do not show or suggest the embodiments of independent Claim 33, it is also demonstrated that Agnoli, Wu and Tso do not show or suggest the embodiments of Claim 35.

For the same rationale as above, Applicants respectfully submit that Agnoli in view of Wu does not teach, describe, or suggest the claimed embodiments. Further, Applicants respectfully submit that Tso does not overcome the shortcomings of Agnoli and Wu. As understood by the Applicants, Tso discloses a method for determining which transcoding service providers are invoked. In particular, Tso discloses that the “predetermined selection criteria may comprise … network characteristics, including … bandwidth” (column 7, lines 20-35). Applicants respectfully submit that selecting a provider based on bandwidth is not the same as, and does not teach, describe or suggest “sending a message associated with said request from said portal to a service location manager … [and] sending a second message from said service location manager to said provider, wherein said second message comprises information enabling said provider to establish communication with said client device” (emphasis added) as claimed. In particular, Applicants respectfully submit that Agnoli, Wu and Tso are silent to such teachings.

Applicants respectfully submit that the combination of Agnoli in view of Wu, further in view of Tso also does not teach or suggest the additional embodiments as recited in Claim 35 that is dependent on independent Claim

33. Therefore, Applicants respectfully submit that Claim 35 overcomes the rejection under 35 U.S.C. § 103(a), and is thus in a condition for allowance as being dependent on an allowable base claim.

Claims 7 and 17

The instant Office Action states that Claims 7 and 17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Agnoli in view Wu, further in view of U.S. Patent Application Publication No. 2003/0046396 by Richter et al., hereinafter referred to as “Richter.” The Applicants have reviewed Agnoli, Wu and Richter and respectfully submit that the embodiments recited in Claims 7 and 17 are patentable over the combination of Agnoli, Wu and Richter, for at least the following rationale.

Claim 7 is dependent on independent Claim 1 and includes the recitations of Claim 1. Claim 17 is dependent on independent Claim 11 and includes the recitations of Claim 11. Hence, by demonstrating that Agnoli, Wu and Richter do not show or suggest the embodiments of independent Claims 1 and 11, it is also demonstrated that Agnoli, Wu and Richter do not show or suggest the embodiments of Claims 7 and 17.

For the same rationale as above, Applicants respectfully submit that Agnoli in view of Wu does not teach, describe, or suggest the claimed embodiments. Further, Applicants respectfully submit that Richter does not overcome the shortcomings of Agnoli and Wu. As understood by the Applicants, Richter discloses differentiating requests based on a “duration of event” (paragraph [0262]). Applicants respectfully submit that prioritizing

processes based on a length of time is not the same as, and does not teach, describe or suggest “sending a message associated with said request from said portal to a service location manager,” “sending a second message from said service location manager to said portal, wherein said second message comprises information for locating and contacting said provider” and “sending a third message from said portal to said client device comprising information for locating and contacting said provider” (emphasis added) as claimed. In particular, Applicants respectfully submit that Agnoli, Wu and Richter are silent to such teachings.

As such, Applicants submit that Agnoli, Wu and Richter fail to make a *prima facie* case of obviousness as not all of the features of Claims 7 and 17 are taught or suggested by the combination. Additionally, and as required by the MPEP as cited above, the instant Office Action fails to explain why the identified differences between Applicant’s claimed inventions and Agnoli, Wu and Richter would have been obvious to one of ordinary skill in the art.

Accordingly, Applicants respectfully submit that the combination of Agnoli in view of Wu, further in view of Richter also does not teach or suggest the additional embodiments as recited in Claims 7 and 17 that are dependent on independent Claims 1 and 11. Therefore, Applicants respectfully submit that Claims 7 and 17 overcome the rejection under 35 U.S.C. § 103(a), and are thus in a condition for allowance as being dependent on allowable base claims.

Claim 40

The instant Office Action states that Claim 40 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Agnoli in view Wu, further in view of Richter. The Applicants have reviewed Agnoli, Wu and Richter and respectfully submit that the embodiments recited in Claim 40 are patentable over the combination of Agnoli, Wu and Richter, for at least the following rationale.

Claim 40 is dependent on independent Claim 37 and includes the recitations of Claim 37. Hence, by demonstrating that Agnoli, Wu and Richter do not show or suggest the embodiments of independent Claim 37, it is also demonstrated that Agnoli, Wu and Richter do not show or suggest the embodiments of Claim 40.

For the same rationale as above, Applicants respectfully submit that Agnoli in view of Wu does not teach, describe, or suggest the claimed embodiments. Further, Applicants respectfully submit that Richter does not overcome the shortcomings of Agnoli and Wu. As understood by the Applicants, Richter discloses differentiating requests based on a “duration of event” (paragraph [0262]). Applicants respectfully submit that prioritizing processes based on a length of time is not the same as, and does not teach, describe or suggest “sending a message associated with said request from said portal to a service location manager … [and] sending a second message from said service location manager to said provider, wherein said second message comprises information enabling said provider to establish communication with said client device” (emphasis added) as claimed. In particular, Applicants respectfully submit that Agnoli, Wu and Richter are silent to such teachings.

As such, Applicants submit that Agnoli, Wu and Richter fail to make a *prima facie* case of obviousness as not all of the features of Claim 40 are taught or suggested by the combination. Additionally, and as required by the MPEP as cited above, the instant Office Action fails to explain why the identified differences between Applicant's claimed inventions and Agnoli, Wu and Richter would have been obvious to one of ordinary skill in the art.

Accordingly, Applicants respectfully submit that the combination of Agnoli in view of Wu, further in view of Richter also does not teach or suggest the additional embodiments as recited in Claim 40 that is dependent on independent Claim 37. Therefore, Applicants respectfully submit that Claim 40 overcomes the rejection under 35 U.S.C. § 103(a), and is thus in a condition for allowance as being dependent on an allowable base claim.

Claims 9 and 13

The instant Office Action states that Claims 9 and 13 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Agnoli in view Wu, further in view of U.S. Patent No. 6,407,680 by Lai et al., hereinafter referred to as "Lai." The Applicants have reviewed Agnoli, Wu and Lai and respectfully submit that the embodiments recited in Claims 9 and 13 are patentable over the combination of Agnoli, Wu and Lai, for at least the following rationale.

Claim 9 is dependent on independent Claim 1 and includes the recitations of Claim 1. Claim 13 is dependent on independent Claim 11 and includes the recitations of Claim 11. Hence, by demonstrating that Agnoli, Wu

and Lai do not show or suggest the embodiments of independent Claims 1 and 11, it is also demonstrated that Agnoli, Wu and Lai do not show or suggest the embodiments of Claims 9 and 13.

For the same rationale as above, Applicants respectfully submit that Agnoli in view of Wu does not teach, describe, or suggest the claimed embodiments. Further, Applicants respectfully submit that Lai does not overcome the shortcomings of Agnoli and Wu. As understood by the Applicants, Lai discloses “redirecting the viewer client to the appropriate server from which to receive the requested media content” (column 9, lines 8-10). Applicants respectfully submit that directing a client to a content provider is not the same as, and does not teach, describe or suggest “sending a message associated with said request from said portal to a service location manager,” “sending a second message from said service location manager to said portal,” wherein said second message comprises information for locating and contacting said provider” and “sending a third message from said portal to said client device comprising information for locating and contacting said provider” (emphasis added) as claimed. In particular, Applicants respectfully submit that Agnoli, Wu and Lai are silent to such teachings.

As such, Applicants submit that Agnoli, Wu and Lai fail to make a *prima facie* case of obviousness as not all of the features of Claims 9 and 13 are taught or suggested by the combination. Additionally, and as required by the MPEP as cited above, the instant Office Action fails to explain why the identified differences between Applicant’s claimed inventions and Agnoli, Wu and Lai would have been obvious to one of ordinary skill in the art.

Accordingly, Applicants respectfully submit that the combination of Agnoli in view of Wu, further in view of Lai also does not teach or suggest the additional embodiments as recited in Claims 9 and 13 that are dependent on independent Claims 1 and 11. Therefore, Applicants respectfully submit that Claims 9 and 13 overcome the rejection under 35 U.S.C. § 103(a), and are thus in a condition for allowance as being dependent on allowable base claims.

Claims 26-30 and 32

The instant Office Action states that Claims 26-30 and 32 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Agnoli in view Wu, further in view of Tso. The Applicants have reviewed Agnoli, Wu and Tso and respectfully submit that the embodiments recited in Claims 26-30 and 32 are patentable over the combination of Agnoli, Wu and Tso, for at least the following rationale.

For the same rationale as above, Applicants respectfully submit that Agnoli in view of Wu does not teach, describe, or suggest the claimed embodiments. Further, Applicants respectfully submit that Tso does not overcome the shortcomings of Agnoli and Wu. As understood by the Applicants, Tso discloses a “[n]etwork client 12, via browser 32, [that] transmits an HTTP request for [a] hypertext object to transcoding server 34 over client/server communications link 14” (column 9, lines 54-56). Applicants respectfully submit that a network client that transmits a request is not the same as, and instead different from and does not teach, describe or render obvious “sending a message associated with said request from said portal to a service

location manager,” “sending a second message from said service location manager to said portal, wherein said second message comprises information for locating and contacting said provider” and “sending a third message from said portal to said client device comprising information for locating and contacting said provider” (emphasis added) as claimed. In particular, Applicants respectfully submit that Agnoli, Wu and Tso are silent to such teachings.

Accordingly, Applicants respectfully assert that the combination of Agnoli in view of Wu, further in view of Tso does not teach, disclose or suggest the claimed embodiment of the present invention as recited in independent Claim 26, that this claim overcomes the rejection under 35 U.S.C. § 103(a), and that this claim is thus in a condition for allowance. Applicants respectfully submit that the combination of Agnoli in view of Wu further in view of Tso also does not teach or suggest the additional embodiments as recited in Claims 27-30 and 32 that are dependent on independent Claim 26. Therefore, Applicants respectfully submit that Claims 27-30 and 32 overcome the rejection under 35 U.S.C. § 103(a), and are thus in a condition for allowance as being dependent on an allowable base claim.

Claim 31

The instant Office Action states that Claim 31 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Agnoli in view Wu, further in view of Richter. The Applicants have reviewed Agnoli, Wu and Richter and respectfully submit that the embodiments recited in Claim 31 are patentable

over the combination of Agnoli, Wu and Richter, for at least the following rationale.

Claim 31 is dependent on independent Claim 26 and includes the recitations of Claim 26. Hence, by demonstrating that Agnoli, Wu and Richter do not show or suggest the embodiments of independent Claim 26, it is also demonstrated that Agnoli, Wu and Richter do not show or suggest the embodiments of Claim 31.

For the same rationale as above, Applicants respectfully submit that Agnoli in view of Wu does not teach, describe, or suggest the claimed embodiments. Further, Applicants respectfully submit that Richter does not overcome the shortcomings of Agnoli and Wu. As understood by the Applicants, Richter discloses load balancing based on a “duration of event” (paragraph [0262]). Applicants respectfully submit that load balancing based on the length of time of an event is not the same as, and does not teach, describe or render obvious “sending a message associated with said request from said portal to a service location manager,” “sending a second message from said service location manager to said portal, wherein said second message comprises information for locating and contacting said provider” and “sending a third message from said portal to said client device comprising information for locating and contacting said provider” (emphasis added) as claimed. In particular, Applicants respectfully submit that Agnoli, Wu and Richter are silent to such teachings.

Applicants respectfully submit that the combination of Agnoli in view of Wu, further in view of Richter also does not teach or suggest the additional embodiments as recited in Claim 31 that is dependent on independent Claim 26. Therefore, Applicants respectfully submit that Claim 31 overcomes the rejection under 35 U.S.C. § 103(a), and is thus in a condition for allowance as being dependent on an allowable base claim.

CONCLUSION

In light of the above listed amendments and remarks, reconsideration of the rejected claims is requested. Based on the arguments presented above, it is respectfully submitted that Claims 1-18 and 26-40 overcome the rejections of record. Therefore, allowance of Claims 1-18 and 26-40 is respectfully solicited.

Should the Examiner have a question regarding the instant response, the Applicants invite the Examiner to contact the Applicants' undersigned representative at the below listed telephone number.

Please charge any fee deficiencies or credit any overpayments to Deposit Account No. 08-2025 with reference to our Docket No. 82179209.

Respectfully submitted,
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Dated: 7/27/2012

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